

Exhibit D

GLENN JOHNSON, PhD, Volume II, 2-25-09

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3
4

5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,)
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)
13)

14 Plaintiff,)
15)

16 vs.)

17 4:05-CV-00329-TCK-SAJ
18)

19 TYSON FOODS, INC., et al,)
20)

21 Defendants.)
22)
23 -----
24
25

26 VOLUME II OF THE VIDEOTAPED
27 DEPOSITION OF GLENN JOHNSON, PhD, produced as a
28 witness on behalf of the Plaintiff in the above
29 styled and numbered cause, taken on the 25th day of
30 February, 2009, in the City of Tulsa, County of
31 Tulsa, State of Oklahoma, before me, Lisa A.
32 Steinmeyer, a Certified Shorthand Reporter, duly
33 certified under and by virtue of the laws of the
34 State of Oklahoma.
35

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A P P E A R A N C E S

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FOR TYSON FOODS: Mr. Robert George
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FOR CARGILL: Mr. Kerry Lewis
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-and-
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FOR SIMMONS FOODS: Mr. John Elrod
Attorney at Law
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FOR GEORGE'S: Mr. James Graves
Attorney at Law
221 North College
Fayetteville, AR 72701

ALSO PRESENT: Dr. Roger Olsen

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I N D E X

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1 VIDEOGRAPHER: Off the Record. The time is
2 9:12.

3 (Following a short recess at 9:12 a.m.,
4 proceedings continued on the Record at 9:19 a.m.)

5 VIDEOGRAPHER: We're back on the Record. 09:18AM
6 The time is 9:19.

7 Q Dr. Johnson, during the break, I put before
8 you what's been marked as Exhibit 13, and let me
9 represent to you the basis for this document. This
10 document is a portion of an aerial photograph that 09:19AM
11 was prepared by the State in this case and produced
12 to the defendants approximately a year ago. It was
13 also the aerial photograph that was ground truthed
14 by investigators for the State of Oklahoma. All of
15 this is outlined in Dr. Fisher's report. This 09:19AM
16 aerial photograph then took the locations, two of
17 the locations you discussed in your report and we've
18 been talking about, Lincoln wastewater treatment
19 plant, and then you used the GIS program to draw the
20 watershed or the drainage area, the subwatershed to 09:20AM
21 the drainage area that would go to that location.
22 Also on this map there are areas of red circles
23 where the State's investigation ground truthed
24 active poultry house locations.

25 A Okay. 09:20AM

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1 Q Active or inactive poultry house locations.

2 MR. GEORGE: Yeah. David, can you be clear
3 there? Are you representing these are active?

4 MR. PAGE: Active or inactive.

5 MR. GEORGE: Active or inactive, okay. 09:20AM

6 MR. PAGE: Uh-huh.

7 Q And finally there's a brown square area where
8 the State has reviewed the records of the Oklahoma
9 Department of Agriculture and Forestry, and that's
10 where it's documented land application has occurred. 09:20AM

11 MR. GEORGE: David, can I ask a couple of
12 questions to see if we can get some clarity around
13 this document? You represented that this photograph
14 has been produced previously by the State in the
15 case. 09:21AM

16 MR. PAGE: Yes.

17 MR. GEORGE: And when you say -- when you
18 make that representation, you're referring to the
19 underlying image; is that correct?

20 MR. PAGE: The photograph, yeah. Not the 09:21AM
21 lines that have been overlaid on the photograph.

22 MR. GEORGE: To your knowledge, is today
23 the first time when the State has produced an aerial
24 photograph, such as what we've put in front of the
25 witness as Exhibit 13, that includes the sample 09:21AM

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1 locations that are shown, the outline of areas of
2 identified land application and the circling in red
3 of active or inactive poultry houses?

4 MR. PAGE: All this information that
5 underlies this exhibit has been produced by the 09:21AM
6 State of Oklahoma --

7 MR. GEORGE: My question is whether or not
8 --

9 MR. PAGES: -- in different forms.

10 MR. GEORGE: Well, I understand that, but 09:21AM
11 prior to today, David, has there been a production
12 of a map that reflects all of the information shown
13 in Exhibit 13 in the form in which you have
14 presented it to this witness?

15 MR. PAGE: I don't know whether it has or 09:22AM
16 not.

17 MR. GEORGE: Okay. I'm going to challenge
18 this as obvious expert analysis that's been done
19 after the expert disclosure deadline and not a part
20 of any production of considered materials or -- 09:22AM

21 MR. PAGE: No.

22 MR. GEORGE: -- production of documents in
23 this case.

24 MR. PAGE: These materials were part of
25 considered materials for Dr. Olsen -- excuse me, Dr. 09:22AM

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1 Fisher and Dr. Engel and also part of Dr. Olsen's
2 considered materials.

3 MR. GEORGE: Can you point -- can you
4 provide me to a reference in either Dr. Olsen or --

5 MR. PAGE: Not at this time. 09:22AM

6 MR. GEORGE: Hang on, hang on. Let me
7 finish. I'm wanting the Record to be clear that if
8 I search Dr. Olsen or Dr. Fisher's expert materials,
9 which I have, I will not find -- I will not find
10 Exhibit 13? 09:22AM

11 MR. PAGE: I'll show you an example. Mark
12 this.

13 MR. GRAVES: It's not a complex issue. Has
14 this piece of paper been produced in the case?

15 A Is that for me to look at? 09:23AM

16 Q Yeah.

17 MR. GEORGE: David, are you going to answer
18 James' question?

19 MR. PAGE: No, I'm not going to answer his
20 question. 09:23AM

21 MR. GEORGE: Okay. We'll take that as a
22 representation that it hasn't been produced.

23 MR. PAGE: Well, I'm going to show you that
24 it has been produced.

25 MR. GRAVES: If I go through Dr. Olsen's 09:23AM

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1 considered materials, am I going to find a Bates
2 numbered Olsen document that looks like this?

3 MR. PAGE: You're going to find the --

4 MR. GRAVES: That's not what I asked. Am I
5 going to find one that looks like this? 09:23AM

6 MR. PAGE: I don't know, James, off the top
7 of my head.

8 MR. GRAVES: Okay. That's what I wanted to
9 know.

10 MR. PAGE: But I do know this: All of this 09:23AM
11 information --

12 MR. GRAVES: I didn't ask about this.

13 MR. PAGE: -- was produced --

14 COURT REPORTER: You guys, one at a time.

15 MR. PAGE: -- in maps in different pieces 09:23AM
16 of expert reports.

17 Q For example, I'm going to show you Exhibit 14.
18 This was part of Dr. Fisher's report. Did you ever
19 review this information concerning poultry house
20 land application? 09:23AM

21 MR. GRAVES: Before he answers the
22 question, I'm going to finish the objection and
23 finish making the Record.

24 MR. PAGE: Well, then make your objections,
25 but you're not here to ask me questions about what's 09:24AM

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1 in the Record.

2 MR. GRAVES: I needed to know the answer to
3 the question to know whether it was objectionable.

4 I appreciate you being candid that you don't know
5 whether or not this piece of paper has been produced
6 as part of any of the considered materials in this
7 case. This particular piece of paper, as Mr. George
8 started down the path while ago, is clearly
9 analysis. It may be based on information that's

10 been produced previously, but this document has not
11 been produced previously, and it's based on analysis
12 that's been done after the expert deadline.

13 MR. PAGE: Let me just make for the Record
14 clear --

15 MR. GRAVES: So I object and move to strike
16 it.

17 MS. COLLINS: Join.

18 MR. PAGE: -- that this particular document
19 was put together as a rebuttal for the work that was
20 performed by Dr. Johnson that we got on December
21 1st. It's taking his map that we've already
22 reviewed and taking the information that was
23 available to him on his map and overlaying it,
24 showing what information was available. It's
25 clearly a rebuttal exhibit.

09:24AM

09:24AM

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09:24AM

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1 MR. GRAVES: And the court has -- has
2 barred rebuttal expert information in this case and
3 supplemental expert analysis in this case.

4 MR. PAGE: I think you're mistaken what the
5 court has ruled in this case.

09:25AM

6 MR. GRAVES: I'm not mistaken. I wrote the
7 motion and read the order. So I'm going to move to
8 strike it, and now you can ask your questions.

9 Q Did you ever review Exhibit 14?

10 A I don't recall seeing this exhibit.

09:25AM

11 Q It was -- do you recall seeing it in Dr.
12 Fisher's report?

13 A No, I don't.

14 Q Do you see that Exhibit 14 identifies areas of
15 land application?

09:25AM

16 MR. GEORGE: Object to form.

17 A Yes. The legend indicates that red or beige
18 squares are reported poultry waste application
19 areas.

20 Q And can you tell whether some of those squares
21 are also represented on Exhibit 13?

09:25AM

22 A This looks like a blow-up of a portion of the
23 whole basin near Lincoln. And the gold shaded box
24 appear to be consistent with the gold shaded box on
25 Exhibit 14.

09:26AM

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